

GOVERNANCE COMMITTEE

14 March 2012

REPORT

Subject Heading:	STANDARDS OF MEMBERS' CONDUCT – Localism Act 2011: new regime
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Policy context:	The Localism Act 2012 introduces a new regime for the standards of Members' conduct
Financial summary:	There are no financial implications

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

SUMMARY

The Localism Act 2012 has introduced a new regime for adjudicating the standards of Members' conduct. There is no longer a national standards framework and there is no obligation to appoint a Standards Committee. There is, however, a requirement for a Members' Code of Conduct, alleged breaches of which must be formally dealt with, and if upheld, sanctions can be imposed.

This report invites the Committee's agreement to some initial matters relating to the management of the new process within the Council and to the

appointment of an “independent person”, required by the Act, who will be involved in dealing with the investigation of alleged breaches of standards. A further report will follow in due course in relation to the required Code of Conduct and other matters.

It should be noted that complaints made before the new system is fully implemented will be dealt with under transitional arrangements and so, for a short period, there is the possibility that both the old and the new systems will operate in parallel.

RECOMMENDATIONS

- 1 That the Committee **RECOMMEND** to Council that, with effect from the date on which section 26 of the Localism Act 2011 comes into force, save insofar as it is necessary for any outstanding complaint made before that section comes into force to be disposed of:
 - (a) The existing Standards Committee be abolished.
 - (b) Responsibility for standards matters under the new regime be delegated to the Governance Committee and that the Adjudication & Review Sub-Committee deal with the investigation and resolution of allegations of breaches of the Council’s Code of Conduct for Members.
 - (c) The functions of the Appointments Sub-Committee be extended to include the interview of applicants for appointment as the Independent Person for Standards under section 28(7) of the Act and making recommendations to the Council as to the appointment.
 - (d) The changes to the Constitution set out in the Appendix to this report be approved.

- 2 That the Committee **RECOMMEND** to Council that the terms of office of the Independent Members of the Committee due to retire at the forthcoming Annual Meeting of the Council be extended until it is abolished and all outstanding matters have been dealt with..

- 3 That, subject to the adoption by the Council of recommendation 1 above, the arrangements proposed in the report for the appointment of an Independent Person be approved.

REPORT DETAIL

- 1 The Localism Act 2011 replaces, virtually in its entirety, the current regime for maintaining Members' standards of conduct. The national regime, run by the Standards Board for England is abolished, as is the requirement for a local Standards Committee. The need for a Code of Conduct is retained (albeit in different terms to the current Code) and there is a requirement for allegations of breaches of that Code to be investigated and dealt with: the Council is, however, given discretion over much of the process, although there is a statutory requirement for the appointment of an Independent Person who has specific tasks to undertake in connection with dealing with such allegations.
- 2 This report addresses some preliminary issues; a further report will follow at the next meeting on detailed issues such as the new Code of Conduct.

Responsibility for the new regime

- 3 The Act repeals the requirement for a Standards Committee (and the associated need to appoint Independent Members to it), although under transitional provisions any complaint made before the date on which the new regime comes into force will continue to be dealt with under the current regime. The current Standards Committee cannot be fully abolished, therefore, until any outstanding issues have been dealt with.
- 4 Two of the existing Independent Persons are due to retire at the forthcoming Annual Meeting. It is possible, however, that their services will be required beyond then to deal with any incomplete cases under the current regime. Since it would be senseless to recruit new Independent Members for at most a few weeks, it is suggested that their terms of office be extended until the Committee is abolished and all outstanding matters have been dealt with.
- 5 The amount of policy work required for standards matters is not expected in future to be as onerous as under the current regime and, therefore, it is suggested that responsibility for standards matters at Member level should pass to this Committee. That would not preclude the Council from appointing a Standards Champion, nor the Leader of the Council from assigning to a Cabinet Member executive authority for dealing with standards issues.
- 6 It would, however, be impracticable for the Governance Committee to deal with the investigation of individual allegations and so it is suggested that the Adjudication & Review Sub-Committee, which reports to this Committee, deal with the investigation and resolution of complaints about Members' conduct, directly or through its Hearings Panels. The Sub-Committee already deals with complaints about service matters and the additional work would be consistent with that. The precise approach to its work on standards matters will be the subject of further report in due course.

- 7 The Act transfers the role of the current Standards Committee in the initial handling of allegations of breach of the Code to the Monitoring Officer.

Independent Person

- 8 The Act requires the appointment of an Independent Person:
- “(a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and**
 - (b) whose views may be sought—**
 - (i) by the authority in relation to an allegation in circumstances not within paragraph (a),**
 - (ii) by a member, or co-opted member, of the authority if that person’s behaviour is the subject of an allegation...”**
- 9 Members, co-optees (including the existing Independent Members of the Standards Committee) and officers, and those who have been such within the past five years, and their relatives and close friends are precluded from appointment as the Independent Person.
- 10 The Independent Person can be appointed only after a recruitment process involving an advertisement inviting applications for appointment and approval of the appointment by a majority of Members at full Council.
- 11 Although it is not necessary for an appointment of Independent Person to have been made by the time the Act’s provisions come into force (expected to be 1 April), any avoidable delay in making an appointment could compromise the Council’s position and, accordingly, it is suggested that responsibility for the recruitment process be delegated to the Appointments Sub-Committee (who would make a recommendation as to the appointment to Council as the final stage in the process). The Monitoring Officer will arrange to advertise the post and, once applications have been received, assessed and short-listed as appropriate, the Sub-Committee would conduct the interviews and make a recommendation.
- 12 The Committee is invited to recommend to the Council that the Sub-Committee’s functions be extended to include the appointment process for the Independent Person.

Code of Conduct

- 13 Section 28 of the Act requires the adoption of a Code of Conduct. That Code must be:
- “... when viewed as a whole, consistent with the following principles—**
 - (a) selflessness;**
 - (b) integrity;**
 - (c) objectivity;**

- (d) accountability;
- (e) openness;
- (f) honesty;
- (g) leadership.”

- 14 No central government guidance is expected about the content of the Code, other than as set out in the Act, as above. One or more model Codes are likely to be prepared by organisations such as the Local Government Association or London Councils and such advice will be considered when received.
- 15 This will require the adoption by the Council of a new Code to replace its existing Code. It is expected to be possible to put forward recommendations for consideration in the further report to follow at the next meeting.

Changes to the Constitution

- 15 The new regime requires adjustments to the Constitution. The suggested changes are set out in the Appendix to this report.

IMPLICATIONS AND RISKS

Financial Implications and Risks

There are no significant or specific financial implications or risks arising from this report; indeed, some savings can be anticipated through the reduction in number of the independent persons' allowance payable for work undertaken in connection with standards matters and the less onerous investigation procedures.

The cost of allowances and investigations will continue to be met from existing budget provision.

Equalities and Social Inclusion Implications and Risks

No implications or risks have been identified. The maintenance of high standards of conduct by Members is in the interest of all sections of the community.

Environmental Implications and Risks

There are no implications or risks for the environment.

Legal Implications and Risks

The Localism Act obliges the Council to adopt a Code of Conduct and to take specified measures to ensure compliance with it.

Failure to carry out the duties imposed by the Act would risk challenges by way of judicial review and/or the Local Government Ombudsman; and could also expose the Council to a risk of decisions being challenged and over-turned.

Human Resources Implication and Risks

There are no implications or risks for Human Resources.

BACKGROUND PAPERS

There are no background papers

CHANGES TO THE CONSTITUTION

Part 1: Summary of the Constitution

Section 3 **amend** second paragraph to read:

Councillors have to comply with a code of conduct to ensure high standards in the way they undertake their duties.

Section 6 **omit** reference to Standards Committee

Section 8 in sub-paragraph (k) **replace** “Standards Committee” by “Monitoring Officer”

Part 2: The Articles of the Constitution

Article 3, section 3.0.1(c) **amend** to read “the Monitoring Officer if they consider that a Member has acted in breach of the Code of Conduct”

Article 9, section 9.08 **amend** reference to the Standards Committee to read

- the Adjudication & Review Sub-Committee when it is conducting an investigation or hearing;

Part 3: Responsibility for Functions

Section 1.2, Table of Functions: Committees

Governance Committee

under “Appointments and dismissals” – **omit** reference to interviewing and appointing candidates for appointment as Independent Person for the Standards Committee

add new sub-heading “Members’ conduct” and **insert** below it

General

- To promote and maintain high standards of conduct by the members and co-opted members of the authority
- To assist members and co-opted members of the authority to observe the authority’s code of conduct
- Through the Standards Sub-Committee, to hear, determine and report upon any allegation of breach of the code of conduct, including the application of any permitted sanction

Members’ code of conduct

- To advise the authority on the adoption or revision of a code of conduct

Guidelines for members in dealing with staff

- To advise the authority on the adoption or revision of the Guidelines on members dealing with staff

Protocol on probity in planning

- To advise the authority on the adoption or revision of the Protocol on Probity in Planning

Whistleblowing Policy and Procedure

To monitor and evaluate complaint numbers and general types made in respect of the Council Whistleblowing policy and procedure and to make any recommendations for improvement to staff and/or Cabinet

Standards Committee - **Delete** the whole entry

Section 1.2, Table of Functions: Sub-Committees

Standards – **Delete** existing entry

Appointments Sub-Committee – Add new bullet point “To make recommendations to Council about the appointment of Independent Persons for Standards matters”

Adjudication & Review Sub-Committee - Add new section “Members’ conduct - To consider allegations of breaches by Members of the Code of Conduct and the appropriate sanction, if any, to be applied in consequence of a finding that the Code has been breached”

Hearings Panels - Add new section “Members’ conduct - To deal with complaints about breaches by Members of the Code of Conduct”

Section 3 Functions delegated to staff

In (aa)Committee Administration and Member Support Manager **amend** the words beginning at line 4 to read “Adjudication and Review Committee and Licensing Committee: including but not limited to”

Section 6 Proper officer functions: Functions of Statutory Officers

Amend 2 Functions of the Monitoring Officer, section (c) to read:

To conduct investigations as directed by the Adjudication & Review Sub-Committee (or its Hearings Panel) into alleged breaches by members of the code of conduct and to report upon them to the Sub-Committee. This function will also be carried out by Deputy Monitoring Officers.

Part 4: Rules of procedure

ACCESS TO INFORMATION PROCEDURE RULES

In rule 1, **delete** “, and the Standards Committee (England) Regulations 2008”

In the Appendix:

Amend the italicised heading above section 3 to read:

The provisions of this legislation are modified in their application to meetings of the Cabinet as follows:

Delete the whole of section 4

COMMITTEE PROCEDURE RULES

In rule 7(c), **amend** second paragraph to read:

This rule shall not apply to meetings of Hearings Panels, the Licensing Sub-Committee or the Standards Sub-Committee, or where the rules of natural justice, human rights and compliance with the Members’ Code of Conduct or similar legal principles prevent a Member from attending.

COUNCIL PROCEDURE RULES

In rule 1, part 2(i) **delete** “, the Standards Committee”

In rule 2(h) **delete after** “and from the Member Champion for Standards”, the words “in respect of the Standards Committee”

Note: recommendations for changes in the following protocols will follow when proposals for the new Code of Conduct are submitted:

Protocol on gifts and hospitality

Protocol on member/officer relations

Protocol on probity in planning matters

Staff code of conduct